



Ninety-Eighth Legislature - First Session - 2003
Committee Statement
LB 282

Hearing Date: January 24, 2003

Committee On: Revenue

Introducer(s): (Landis)

Title: Adopt the Streamlined Sales and Use Tax Agreement and harmonize Nebraska law

Roll Call Vote – Final Committee Action:

Advanced to General File

X Advanced to General File with Amendments

Indefinitely Postponed

Vote Results:

8	Yes	Senators Baker, Bourne, Connealy, Hartnett, Janssen, Landis, Raikes and Redfield
0	No	
0	Present, not voting	
0	Absent	

Proponents:

Senator David Landis
Mary Jane Egr, State Tax Commissioner
Jim Otto
Lynn Rex
Kathy Siefken

Representing:

Introducer
Nebraska Department of Revenue
Nebraska Retail Federation
League of Nebraska Municipalities
Nebraska Grocery Industry Association

Opponents:

None

Representing:

Neutral:

Bill Peters
Ronald Sedlacek

Representing:

Nebraska Tax Research Council
Nebraska Chamber of Commerce & Industry

Summary of purpose and/or changes:

LB 282 would ratify the Streamlined Sales and Use Tax Agreement as approved by the implementing states, including Nebraska, on November 12th, 2002. The bill also would enact conforming changes to the statutes that are required to participate with the other states in the Streamlined System. The bill does not change the tax base of the state of Nebraska in any way, but many definitions are changed or moved and all exemptions from tax have been relocated to the same place in the statutes.

The bill also spells out all the conditions Nebraska is agreeing to as a consequence of participating in the agreement. These conditions include using uniform definitions, sourcing, and rounding rules, providing sixty days notice for all state and local changes in rate or base, recognizing out-of-state companies that register for collection through the governing organization of the agreement, and complying with the decisions of the governing organization.

Section by section summary

This summary states what is in the section and where it came from. Bolded phrases cite either a section of the agreement or a location in our current statutes that the new material was moved from.

Section 1 would amend section 9-306.01 to change a cross reference to occasional sale to refer to a new section number.

Section 2 would amend section 13-319 to insert a cross reference to the uniform sourcing sections, 49 to 52.

Section 3 would amend section 13-324 to require any adoption or change of a county sales tax to be adopted at least 120 days prior to the start of the quarter for which it will be effective. The Department of Revenue must provide at least 60 days notice to the retailers. **Agreement section 305.**

Section 4 would amend section 13-326 to strike various sourcing rules for motor vehicle and utility service subject to county sales tax and cross reference the uniform sourcing sections, 49 to 52 instead.

Section 5 would amend section 77-3,117 to insert the uniform rounding rules of **agreement section 324**. Essentially, the agreement requires rounding to the nearest whole number.

Section 6 would amend section 77-2701 to incorporate all the new sections into the Revenue Act.

Section 7 is a new section that would require any change in the state sales tax rate or base to be effective at the beginning of a calendar quarter. **Agreement section 304**. For services covering a period that contains a base or rate change, rate increases or base expansions are effective with the first period starting after the change while rate decreases or base contractions are effective with the first bill after the change. **Agreement section 329**.

Section 8 would amend section 77-2702.03 by striking the section number and incorporating the definitions in sections 9 to 47 into the sales tax statutes. Existing definitions are renumbered and rearranged to be alphabetical. New definitions as required by the agreement are added in alphabetical order. Significant of these new definitions are:

Section 12 defines “certified automated system” as software certified by the member states to accurately calculate and remit the proper tax in all jurisdictions within the member states.

Section 13 defines “certified service provider” as an agent certified by the member states as eligible to be contracted by sellers to perform all sales tax functions for sellers.

Section 19 defines “governing board” as the body containing representatives from each participating state that is responsible for approving membership in the agreement certifying automated systems and service providers, approving monetary allowances, registering retailers under the agreement, and resolving disputes.

Section 20 redefines “gross receipts” as the total amount of the sale or lease or rental price. Stricken are various items that are not deducted, like the cost of goods sold and the cost of transportation. Remaining are the inclusion of gross receipts for utility, telephone, cable or satellite services, computer software, video programming and the services added by LB 1085 (2002).

Added to the definition of gross receipts would be items moved from the current definition of retail sale, **section 77-2702.13**. These include the sale of admissions, live plants incorporated into real estate, property purchased by a contractor for annexation to real estate, and prepaid calling cards.

Gross receipts would not include the amount of any rebate or returned merchandise. Struck were exclusions that are duplicated in the definition of sales price, like finance charges and trade-ins.

Section 22 inserts a new definition for “lease or rental” as required by the **agreement, Appendix C**. The definition excludes financing arrangements, and contracts that require supplying both the property and a skilled operator.

Section 24 defines “member states” as any and all states that have been approved for participation in the Streamlined Sales and Use Tax Agreement by the governing body.

Section 25 defines “model 1 seller” as a seller that has contracted with a certified service provider to carry out all sales tax calculation, collection, and remittance responsibilities.

Section 26 defines “model 2 seller” as a seller that has selected a certified automated system to help the seller carry out its sales tax responsibilities.

Section 27 defines “model 3 seller” as one that uses its own automated system to carry out its sales tax responsibilities.

Section 30 defines “product-based exemption” as a sales tax exemption based on what is sold rather than the identity of the buyer or seller. Under section 77 of the bill (77-2712.05) the state may have product-based exemptions so long as the uniform definitions are used where applicable.

Section 35 defines “retail sale” as any sale other than a sale for resale as required by the **agreement, Appendix C**. Nebraska’s current definition is found in section 77-2702.13 which is repealed outright by the bill. The current definition contained many special inclusions, like admissions and live plants incorporated into real estate that have been transferred to the

definition of gross receipts under this bill. The definition also contained many exemptions such as ingredient and component parts, livestock and agricultural chemicals, and containers used for packaging. These have been moved to the exemption sections in this draft.

Section 36 defines “retailer” as any seller as required under the **agreement, Appendix C**. Several additions to this basic definition that are in the current section are restated as “persons who have the duties and responsibilities of sellers for the purposes of sales and use taxes”. These include auctioneers, operators of flea markets, and option 1 contractors. Several subtractions that are in current law are restated as “persons who do not have the responsibilities of sellers” in this bill. These include sellers at auctions and flea markets and hotels and licensed health care providers providing lodging. This section also strikes redundant exclusions on page 31 of the bill.

Section 39 defines “sales price” as required under the **agreement, Appendix C**, which allows exclusions for discounts, financing charges, trade-ins, and taxes. These exclusions are struck from the current definitions of “gross receipts” and “retail sale” because they were redundant with exclusion in this definition.

Section 42 defines “Streamlined Sales and Use Tax Agreement” as the agreement approved by the member states on November 12, 2002.

Section 43 defines “tangible personal property” as including electricity, water, gas, steam and prewritten computer software. This definition is required by the **agreement Appendix C**.

Section 47 defines “use-based exemption” as an exemption based on use of the property. Under section 77 of the bill (77-2712.05) the state may have use-based exemptions.

Section 48 would amend section 77-2703 to specifically allow sellers to compute the tax per item or based on the total invoice and to use the rounding rule provided in section 5 (**section 77-3,117, agreement section 324**). This section also adds provisions dealing with the responsibility of an advertising agency that purchases property for a principal to pay sales tax. This provision was moved from the definition of retail sale, **section 77-2702.13**

Also, various sourcing provisions, especially regarding motor vehicles and motorboats and the services that were added last year in LB 1085 are struck and relocated in the uniform sourcing sections – 49 to 52.

Section 49 inserts the general sourcing rules as found in **agreement section 310**. Generally, a sale is sourced at the business location of the seller. If delivered, the sale is sourced at the delivery location where the purchaser takes possession. If that is unknown, a sale is sourced at the address of the purchaser that is in the records of the seller. If there is no address that is known, the transaction is sourced to the address from which the property was shipped. With regard to leases that require periodic payments, the sourcing of the transaction moves to where the leased property is predominately located. Intermittent movement is not to affect sourcing. The sourcing rules for the services added by LB 1085 are located in subsection 10 of this section. **(Moved from 77-2703.)**

Section 50 allows businesses to utilize a multiple points of use exemption form that allows the seller to not collect sales tax. Instead, the purchaser pays use tax directly. **Agreement section 312.**

Section 51 allows businesses purchasing direct mail to also pay use tax directly.

Section 52 contains the sourcing rules for telecommunications as provided in the *Goldberg v. Sweet* U.S. Supreme Court decision. In short, an ordinary phone call is sourced to the location where the call either originated or terminated where it is billed to an address in the jurisdiction. **Agreement section 314.**

Mobile telecommunications are sourced as required under the Mobile Telecommunications Sourcing Act. These provisions are moved from **Section 77-2706.02** which is repealed outright in the bill. Essentially, as required by federal law, all mobile telecommunications are sourced to the home or business address of the purchaser of the service.

Section 53 amends the current exemption of prescription medicine and devices (section 77-2704.09) to adopt the required uniform definition for a product-based exemption in the **agreement Appendix C**. The exemption would be for “drugs” excluding “over the counter drugs”. There are no changes in substance, but the definitions for “durable medical equipment” and “mobility enhancing equipment” cover our current exemption for orthotic devices, allowing that exemption to be struck. Repair parts for such equipment are also specifically included in the exemption.

Section 54 would amend the exemption for meals serviced by charitable, educational, and civic organizations, and political events to include admissions and meals on wheels. (**Moved from section 77-2702.13**).

Section 55 would amend the exemption for agricultural and manufacturing energy (section 77-2713) to include water for irrigation and manufacturing. (**Moved from section 77-2702.07**.)

Section 57 would amend the exemption for grocery store food (section 77-2704.24) to adopt the required uniform definition for “food and food ingredients” (**agreement Appendix C**). Food and food ingredients excludes alcoholic beverages, dietary supplements, and tobacco products. Allowable exceptions from the exemption are prepared (restaurant) food and food sold through vending machines.

Section 59 would place in the exemptions exclusions that are currently in place for property ultimately transported out of the state. These exclusions are currently found in **sections 77-2702.19 and 77-2703**.

Section 60 would relocate into the exemptions exclusions that currently exist for ingredient and component parts. (Current **section 77-2702.13**.)

Section 61 would relocate into the exemptions exclusions that currently exist for livestock, grain, seed, agricultural chemicals and oxygen used for aquaculture. (Current **section 77-2702.13**.)

Section 62 would relocate into the exemptions exclusions that currently exist for containers used in shipping products. (Current **section 77-2702.13.**)

Section 63 would relocate into the exemptions exclusions that currently exist for occasional sales. (Current **section 77-2702.13.**)

Section 64 would relocate into the exemptions exclusions that currently exist for purchases that were taxed in another state. (Current **section 77-2702.13.**)

Section 65 would relocate into the exemptions exclusions that currently exist for repair parts for railroad rolling stock and parts for other common contract carriers. (Current **section 77-2702.13.**)

Section 66 would relocate into the exemptions exclusions that currently exist for access charges between telephone companies. (Current **section 77-2702.13.**)

Section 67 would relocate into the exemptions exclusions that currently exist for use of a prepaid calling card. (Current **section 77-2702.13.**)

Section 68 would relocate into the exemptions exclusions that currently exist for rental of videotapes and other programming where an admission is charged for viewing. (Current **section 77-2702.13.**)

Section 69 would enact a new exemption for any food or food ingredients purchased using food stamps or electronic benefits transfer as required by federal law. This entity-based exemption was made necessary by the required change in the definition of food and food ingredients. (Currently part of the exemption for food, **section 77-2704.24.**)

Section 70 would amend section 77-2705 (retailer registration) to allow retailers to register and collect Nebraska sales tax through registration with the member states under the agreement.

Section 71 would amend section 77-2708 (remissions of sales tax) to authorize remissions as provided in the agreement and to adopt the uniform bad debts provision. (**Agreement section 320.**) The provision is essentially the same as our current allowance for bad debts. Bad debts that can be taken as an expense for federal income tax purposes may be subtracted from gross receipts for purposes of the sales tax return. Subsequent collection of the bad debt would add the amount collected to a later return.

Section 73 would amend section 77-2711 to insert the confidentiality requirements of **agreement section 321.** The new confidentiality provisions apply to model 1 sellers and the certified service providers that these sellers use to collect and remit sales tax. The certified service providers must keep individual, private information private and the individual has some right to correct inaccurate information. There is to be notice to individuals of the privacy policy.

Section 74 would amend section 77-2712.02 to provide more detail of the intention of the legislature to pursue more uniformity among participating states and reduce complexity for multi-state retailers. The purpose of the agreement is to simplify tax collection through

uniformity in state and local tax bases and collection procedures, simplification of registration, remittances, and exemption administration, and uniform sourcing of transactions. **Agreement section 102.** The agreement is not to influence states to impose or exempt any item from taxation. **Agreement section 103.**

Section 75 would amend section 77-2712.03 to formally ratify the agreement and state that Nebraska agrees to participate in and abide by the governing structure of the agreement and the standards for inclusion and withdrawal therefrom. **Agreement Article VIII.** The state also agrees to use the dispute resolution mechanism. **Agreement Article X.**

Section 77 would amend section 77-2712.05 to spell out what the state agrees to, including honoring automated processes and multi-state exemption certificates. The state may enact product-based exemptions, but must use the uniform definitions in the agreement where they exist to define the product that is to be exempted. The state may enact entity-based or use-based exemptions. **Agreement section 314.** The state also agrees to accept multi-state seller registration and that such registration does not infer nexus for the collection of any other tax. **Agreement section 401.** The state also agrees to simplify local taxes.

Sections 76, 78, and 79 harmonize sections 77-2712.03, 77-2713, and 77-27,119.03 to include the new sections.

Section 80 would amend section 77-27,142 to provide that city sales tax is sourced to the proper city according to the uniform sourcing rules in sections 49 to 52.

Section 81 would amend section 77-27,143 to provide that cities changing or adopting a local sales tax must provide 120 days notice to the Department of Revenue before the adoption or change is effective. The Department, in turn, must provide 60 days notice to retailers. Also this section provides that the state is to provide and maintain a data base of local jurisdictions, addresses and sales tax rates for use by retailers. Five and nine digit zip codes are the basis for the data base. If retailers use the data base, they are to be held harmless for errors. **Agreement section 305.**

Section 82 would amend section 77-27,147 to eliminate the motor vehicle sourcing rules in the local sales tax in lieu of the uniform sourcing rules in sections 49 to 52.

Section 83 would amend section 77-27,233 to harmonize the new section numbers.

Section 84 provides an operative date of January 1, 2004 for the operational sections and the regular effective date (without an emergency clause) for the streamlined sales and use tax ratification and description sections.

Sections 85 and 86 are the repealer sections, and

Section 87 repeals several sections outright. The sections repealed are replaced definitions, the current location of the Mobile Telecommunications Sourcing Act, and sections in the current authorization to negotiate the Streamlined Sales and Use Tax Agreement that are no longer necessary.

Explanation of amendments, if any:

The Committee Amendments 1) renumber the subsections in the definition of lease or rental to be consistent with the agreement, and 2) place a legislative representative appointed by the Executive Board on the delegation that represents the state on the governing body.

Senator David Landis, Chairperson